

Green, LindaE

From: Palacios, Patricia <ppalacios@steptoe.com>
Sent: Friday, January 30, 2015 10:01 AM
To: r10foia@epa.gov; FOIA HQ
Subject: FOIA Request
Attachments: FOIA Request 2015.1.30.pdf

Attached please find a FOIA request filed on behalf of the Pebble Limited Partnership. An original is being sent via certified U.S. Mail.

Best regards,

Patty Palacios
Steptoe & Johnson, LLP
1330 Connecticut Ave., NW
Washington, DC 20036
direct line: (202) 429-6757
cell: (202) 674-4660

The information contained in this e-mail may be privileged, confidential, or protected from disclosure. If you are not the intended recipient or you received this e-mail in error, you should avoid any dissemination, distribution, or copying and should notify the sender at ppalacios@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

January 30, 2015

Via Certified U.S. Mail and Email

Freedom of Information Officer
U.S. EPA, Region 10
Office of External Affairs
1200 6th Ave., Suite 900 (CEC-142)
Seattle, WA 98101
rl0foia@epa.gov

National Freedom of Information Officer
Records, FOIA, and Privacy Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

Re: Freedom of Information Act Request

Dear Sir or Madam:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and implementing regulations of the U.S. Environmental Protection Agency ("EPA"), 40 C.F.R. Part 2, the Pebble Limited Partnership ("PLP"), by and through its counsel, Steptoe & Johnson LLP, hereby requests a copy of the following:

1. All documents that relate to EPA's compliance with Section 4.1(5) and 4.1(6) of the *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency* ("EPA Guidelines")¹ with respect to EPA's document, titled "An Assessment of Potential Mining Impacts on

¹ U.S. Env'tl. Prot. Agency, EPA/260R-02-008, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency (2002).

Salmon Ecosystems of Bristol Bay, Alaska.”² This includes, but is not limited to:

- a. All documents that relate to EPA’s Quality Assurance Project Plan(s), or equivalent document(s); and
 - b. All documents that relate to EPA’s assessment of data to verify that the data is of sufficient quantity and adequate quality for the intended use.
2. All documents that relate to EPA’s compliance with Section 4.1(5) and 4.1(6) of the EPA Guidelines with respect to EPA’s document, titled “Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska.” This includes, but is not limited to:
- a. All documents that relate to EPA’s Quality Assurance Project Plan(s), or equivalent document(s); and
 - b. All documents that relate to EPA’s assessment of data to verify that the data is of sufficient quantity and adequate quality for the intended use.

For the purposes of these requests, “documents” refers to any electronic, written, graphic, video, or audio matter, however produced or reproduced, whether draft or final versions, and including but not limited to correspondence, emails, notes, interoffice communications, reports, memoranda, minutes, summaries, telephone records, telephone message logs or slips, PowerPoint presentations, meeting agendas, transcripts, call lists, spreadsheets, maps, photographs, data compilations, *Vaughn* indices, privilege logs, or calendars.

In responding to these requests, EPA’s search should encompass, but should not be limited to: (a) documents sent to or from email addresses used by current or former EPA employees and representatives, regardless of whether such addresses are private or secondary addresses (*e.g.*, the email address for “Richard Windsor,” the personal/secondary email addresses of Phil North, etc.), or official EPA addresses and (b) documents sent to non-governmental parties.

With respect to these requests, EPA need not provide PLP with copies of any documents that PLP itself has submitted to EPA and EPA need not provide duplicative copies of documents

² U.S. Env’tl. Prot. Agency, EPA/910-R-14-001A-C, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska (2014).

to the extent the same document is located in more than one location. EPA also need not include in its response the following:

1. Unredacted documents available to the public as of the date of this letter in the Bristol Bay FOIA reading room
(ftp://ftp.epa.gov/reg10ftp/bristol_bay_FOIA_reading_room);
2. Unredacted documents available to the public as of the date of this letter in Regulations.gov in the following dockets: EPA-HQ-ORD-2013-0189; EPA-HQ-ORD-2012-0276; EPA-HQ-ORD-2012-0358; or
3. Unredacted documents encompassed by PLP's outstanding January 22, 2014, June 13, 2014, and January 9, 2015 FOIA requests submitted to the EPA.

EPA should, however, produce *in toto* any document and attachments that are only partly encompassed within categories described in the foregoing portions of this paragraph. For instance, EPA should produce a responsive email and all of its attachments even if one attachment was also provided in the Bristol Bay FOIA reading room.

If any documents covered by this FOIA request have been deleted, destroyed, removed, or cannot be located, please provide all surrounding documents as well as a list of all records that have been deleted, destroyed, removed, or cannot be located, a description of actions taken in response to the unavailable documents, and any documents relevant to or generated in connection with implementing those actions.

FOIA Exemptions

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information to appeal the denial. See 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F). To comply with legal requirements, the following information must be included:

4. Basic factual material about each withheld item, including the originator, addressees and recipients, date, length, general subject matter, and location of each item; and
5. Explanations and justifications for the denial, including identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions, identify and describe the withheld portions, specify the applicable exemption, and provide the remainder of the record. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F), (b).

We encourage you to release any records, or portions thereof, that may technically be shielded by exemptions if there is no purpose served by withholding the requested records. *Chrysler Corp. v. Brown*, 441 U.S. 281, 294-95 (1979) (holding that FOIA exemptions are discretionary). We note that FOIA provides that an arbitrary and capricious refusal to produce responsive documents will result in investigation initiated by special counsel to determine whether disciplinary action is warranted against the individual at the agency primarily responsible for the withholding. 5 U.S.C. § 552(a)(4)(F).

Timing and Mechanics of Production

We request that in responding to this letter, EPA comply with all relevant deadlines and other obligations set forth in FOIA and EPA's regulations, and we look forward to receiving your response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce records on a rolling basis; the search for – and deliberation concerning – certain documents should not delay the production of others that EPA has already retrieved and could turn over. Please note that PLP is interested in working with EPA to ensure that the burden associated with this FOIA request is minimized to the extent practicable, including discussing phased or prioritized document productions.

We prefer to receive electronic documents, and not paper copies, whenever possible. To the extent possible, we request that EPA provide the requested information in searchable, electronic format on CD, DVD, or external hard drives of sufficient size to contain the production. Electronic files should be provided in their original format, not in PDF containers. Individual emails, and their attachments, should be maintained as single msg files. If this is not possible, then emails and their attachments should be provided in either PST or NSF containers, thereby preserving all attachment information.

We understand that there may be fees and costs associated with this request, and we agree to pay any fees or costs up to \$1,000 associated with making these materials available to us. If the costs will be in excess of \$1,000, please advise me before such costs are incurred.

As noted, this letter does not seek documents that are encompassed by PLP's January 22, 2014, June 13, 2014, or January 9, 2015 FOIA requests to EPA. Accordingly, PLP's submission of the present letter is not a basis for EPA to further delay production of documents responsive to these requests.

Freedom of Information Officer
National Freedom of Information Officer
January 30, 2015
Page 5

Step toe
STEP TOE & JOHNSON LLP

In responding to the present letter, please mail copies of all requested documents, indices and logs, and any invoice for reasonable FOIA fees to the undersigned.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Patricia B. Palacios